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Federal Communications Commission  
Office of Secretary

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William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: Ex Parte Presentation  
CC Dkt. No. 96-98

Dear Mr Caton:

Enclosed please find an original and two copies of a written *ex parte* presentation of Omnipoint Communications, Inc. for inclusion in the above-referenced docket. Should you have any questions concerning this matter, please feel free to contact the undersigned.

Sincerely,

  
Mark J. O'Connor

Enclosures

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HAND DELIVERY

Regina Keeney  
Chief, Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Room # 500  
Washington, D.C. 20554

Michele Farquhar  
Chief, Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, N.W.  
Room # 5002  
Washington, D.C. 20554

Re: CC Docket No. 96-98  
Ex Parte Presentation

Dear Ms. Keeney and Farquhar:

Omnipoint Communications, Inc. ("Omnipoint"), by its attorneys, files this letter to urge the Commission to clarify in its initial order in this proceeding that the Telecommunications Act of 1996 (the "1996 Act") permits a regional Bell operating company ("RBOC") to carry the traffic of competing wireless providers across LATA boundaries. As explained below, the statutory restrictions on RBOC provision of inter-LATA telecommunications services at 47 U.S.C. § 271 do not prevent such inter-LATA carriage arrangements and, as a matter of policy, such carriage would further the goals of more robust and efficient interconnection and local telecommunications competition.

It is well established that the RBOCs' networks currently cross LATA boundaries, even though no inter-LATA service may be offered to the public inconsistent with the terms of the

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1996 Act or the Modified Final Judgment. For example, RBOCs own and maintain their own networks for internal office-to-office and other official traffic; these lines also provide the RBOCs with connections to their regional billing, directory assistance, and operator service centers.

Given that these networks already exist, carriage by the RBOCs of wireless carriers' traffic could greatly increase the efficiency and reduce the costs for competing wireless providers in at least two significant ways. First, it would allow some measure of competition between RBOC and IXC providers of transit facilities. Without it, competing carriers are forced to pay the going rate set by the sole provider -- the IXC. Second, with RBOC facilities available, the wireless provider can lower transport costs by choosing the most efficient routing/transport arrangements. By contrast, access to the IXCs' facilities alone forces wireless providers to pay for additional mileage and other facilities simply to deliver the traffic to and from the nearest available IXC point of presence ("POP").

One tangible example of this is access to RBOC Digital Access Cross-connect Systems ("DACS") that cross LATA boundaries. DACS (a software-defined multiplexer that converts T1 and T3 lines) greatly reduces a competing telecommunications service providers' cost of leased lines. Competing carriers could then lease DACS facilities from one of two providers -- RBOCs or IXCs. However, RBOCs generally have deployed more DACS facilities in a given service area than IXCs, which have such facilities only at a select number of their POPs. Without access to the RBOC facilities that cross LATA boundaries, the use of DACS by wireless operators is far more limited. In addition, PCS operators with cell sites in rural areas, which typically cannot support the costs of a switch in each LATA, also face problems obtaining T3 facilities. Access to RBOC DACS facilities will hasten PCS service to rural areas and increase the competitiveness of PCS generally.

Omnipoint's negotiations for such RBOC facilities has been significantly stalled by concern that the Commission may deem that such an arrangement would contravene Section 271 of the Communications Act. 47 U.S.C. § 271(a) ("Neither a Bell operating company, nor any affiliate of a Bell operating company, may provide interLATA services . . ."). Our review of the statutory prohibition against RBOC interLATA services, and its intent, leads us to believe that this perception is inconsistent with the law. We base this conclusion both on the statutory language of Section 271 and on the intent of Congress to establish a regulatory environment for local telecommunications that encourages efficient competition among carriers.

As a matter of statutory construction, the Section 271 prohibition does not apply to services offered only to competing carriers. Section 271(a) prohibits RBOCs from offering an

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"interLATA service," which is defined at Section 153(21) of the Act as "telecommunications between a point located in a local access and transport area and a point located outside such area." The Act also defines "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(46). Since these facilities would be offered only to a small number of users -- the competing wireless carriers -- and not in any way to the public, it is not a "telecommunications service" within the meaning of the Act. Stated differently, the use of these facilities would be more in the nature of private carriage, provided only at the request of competing carriers, pursuant to contract negotiated at arms length. Clearly, such an arrangement would not violate Section 271.

This result is also fully consistent with the pro-competitive intent of Section 271, and the local competition provisions of Section 251 and 252. As the Commission noted, "[v]iewed as a whole, the statutory scheme of section 251(b) and (c) enables entrants to use interconnection [to LEC facilities] . . . in the manner that the entrant determines will advance its entry strategy most effectively." Notice of Proposed Rule Making, CC Docket No. 96-98, FCC 96-182 at ¶ 15 (rel. April 19, 1996). We note that use of RBOC facilities in this way does not significantly impinge on traditional long-haul services offered by IXC's, but would only be used to carry traffic relatively short interstate and inter-LATA distances primarily to and from the wireless carrier's switch.

In this case, more efficient transport, and more interconnectivity between networks, has several salutary benefits. First, as the cost of providing wireless services declines, wireless carriers are better able to establish a foothold in the local communications market and fulfill Congress' and the Commission's goals for a more competitive local communications market. Id.; "FCC Votes to Permit Flexible Service Offerings in the Commercial Mobile Radio Services," Public Notice (rel. June 27, 1996). Second, it comports with the Commission's efficiency objectives when it set large BTA and MTA license areas for broadband PCS stretching across several LATAs.<sup>1</sup> Ultimately, the American consumer stands to benefit economically with lower priced service and different service providers to choose from.

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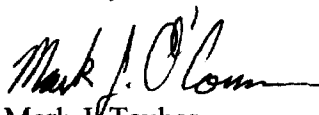
<sup>1</sup> "[T]he values of most broadband PCS licenses will be significantly interdependent because of the desirability of aggregation across . . . geographic regions." Fifth Report and Order, PP Dkt. No. 93-253, 9 FCC Rcd. 5532, ¶31 (1994); see also Memorandum

(Footnote continued to next page)

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We urge the Commission to make it clear that use of RBOCs' facilities for carriage of MTA and BTA-based competing wireless carrier traffic across LATA boundaries does not violate Section 271 of the Act. In accordance with the Commission's *ex parte* rules, two copies of this letter will be submitted to the Commission's Secretary.

Sincerely,



Mark J. Tauber  
Mark J. O'Connor  
Counsel for Omnipoint  
Communications, Inc.

/mjo

cc: Karen Brinkmann  
Rosalind Allen  
David Nall  
David Furth  
Peter Tenhula  
Jay Markley  
Debra Weiner  
Suzanne Treteault  
David Ellen  
Kathy Franco

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(Footnote continued from previous page)

**Opinion and Order**, GN Dkt. No. 90-314, 9 FCC Rcd. 4957, 4987-88 (1994) ("[t]he ten year history of the cellular industry provides evidence generally that . . . [MSA and RSA] service areas have been too small for the efficient provision of regional or nationwide mobile service);" **Second Report and Order**, GN Dkt No. 90-314, 8 FCC Rcd. 7700, 7732 (1993) (MTA areas were chosen to "facilitate regional and nationwide roaming; [and] allow licensees to tailor their systems to the natural geographic dimensions of PCS markets."), *modified*, 9 FCC Rcd. 4957 (1994).